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| 09/937,794 | 02/20/2002 | Isabelle Rebeaud | 14926 | 7036 |

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EXAMINER

TRAN LIEN, THUY

| ART UNIT | PAPER NUMBER |
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1761

DATE MAILED: 03/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/937,794

Applicant(s)

REBEAUD, ISABELLE

Examiner

Lien T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 8-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claims 1, 4, and 8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the amendment filed 9/8/05, applicant amends the claims to includes the limitations ' borders being distant to one another, distant borders and distant top and bottom borders". These limitations are not supported by the original disclosure. The specification does not disclose that there is a distant between the borders.

Claims 1, 4 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the phrase " being distant to one another" is indefinite because it is not clear what applicant intends to claim. The same line states " superposition of the top and bottom borders"; how can the borders be both superposition one on top of the other and be distant to one another". Also, the borders are formed by folding one portion of the dough over the other portion; thus, it is not clear how a distance can form.

Claim 4 essentially has the same problem as claim 1.

Claim 8 has the same problem as claim 1.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Persi in view of Viviano et al.

Persi discloses a method of making a pizza food product. The method

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comprises the steps of shaping a dough into a rectangular shape, placing pizza ingredients along the central portion of the dough, folding the dough along its longitudinal length such that the long edges are in abutment, pressing the edges against each other so as to tight seal the ingredients and heating the filled dough product. The cooked product is packaged in suitable packaging material. (see columns 3-4)

Persi does not teach folding the dough after it is cooked and coating the edge with an edible paste of starch. Also, the Persi method comprises the additional step of forming a toroidal shape after folding the dough.

Viviano et al disclose a method of making filled food product. They teach to apply food starch to dough layers to help the dough regions to stick to each other. (see col. 6 lines 10-12)

It would have been obvious to one skilled in the art to omit the step of bringing the edges together to form a toroidal shape if one wants to make a rectangular shape product. Such step only affects the shape of the product and not the type of product. As to the folding after cooking, it is well known in the art to form pocket products by folding the dough over itself, this is commonly done when making calzone, turnover, pie etc. It is common to fold raw dough because it gives better sealing. However, cooked dough can also be folded. For example, when making wafer, or ice cream cone, the dough is shaped after it is cooked. The folding after cooking or before cooking gives the same product. In cooking, it is not uncommon to use alternative steps to make the same product. The cooking of the product in an open face manner gives

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the advantage that the filled ingredients will be cooked in a shorter amount of time because they are not enclosed within the dough shell. Thus, it would have been obvious to one skilled in the art to fold the dough after cooking if one wants to reduce the cooking time. It is well known that cooked dough will not stick to each other as well as raw dough; thus, it would have been obvious to one skilled in the art to use an adhesive when sealing a cooked dough. Starch is well known to be used as adhesive as shown by Viviano et al. It would have been obvious to one skilled in the art to use starch as shown by Viviano et al to seal the edges of the dough layers when the dough is folded after cooking. It would also have been obvious to use flour as the alternative adhesive because flour contain starch. As to the distant between the edges, it is unclear what applicant means by this and the specification does not disclose any distance between the borders of the dough layers. In fact, claim 4 recites juxtaposition of the top and bottom borders. If applicant means the distance created by the starch paste, then it is obvious the Persi product will have such distance when the starch paste is used to seal the edges.

Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Viviano.

Viviano et al disclose a filled pocket dough product. The product is formed by folding one portion of the dough over another portion to form a pocket enclosing the filling. The product is baked. In addition to other means of minimizing seal breaches, Viviano et al teach to apply food starch to dough layers to help the layers to stick to each other. (see col. 3 lines 6-24, col. 6 lines 5-11)

The forming of the pouch in the hot fold in hot state by folding and rolling after cooking is a difference in processing steps which do not determine the patentability of the product. The Viviano et al product is the same product as claimed; the product has a cordon of edible paste because Viviano et al teach to apply layer of food starch between the dough layers. As to the distant between the edges, it is unclear what applicant means by this and the specification does not disclose any distance between the borders of the dough layers. If applicant means the distance created by the starch paste, then it is obvious the Viviano et al. product has such distance when the starch paste is used on the dough layers. As to the folding as recited in claim 10, it would have been obvious to one skilled in the art to use other fold depending on the look wanted for the product. The folding of longitudinal border and lateral borders to enclose the filling is well known in the art. This is done in making pastries product containing filling.

In the response filed 12/27/05, applicant argues the amended claims are supported by the original disclosure on pages 4-5 which disclose " separation of said band components by a defined small gap". This disclosure does not support the claims because the specification does not define this " small gap". The " small gap" is not the same as the borders being distance to one another as claimed. Applicant states Figure 1 clearly shows that the border 5 and border 7 are distant to one another. The basis of applicant's statement is not understood because the borders 5 and 7 are shown to be abutting one another. There is no gap and clearly there is no distance between the inner surfaces forming the edge of the two borders. Applicant has not pointed out the

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distance in the drawing. Also, if the two borders are distant to one another, then how can an edge be formed between the two borders.

With respect the 112 second paragraph rejection, the rejection is maintained because changing " juxtaposition" to "superposition" does not correct the problem. Applicant argues the borders of the dough do not touch due to the toppings applied to the pizza dough, just as the covers of a book do not touch because of the pages between the covers. A pocket pizza dough is not the same as a book. As to borders not being touch due to the topping, this depends on where the toppings are placed. If the toppings are placed right where the two borders come together, this might be true. But, if the toppings are placed in the center, then, it is not true because the folding causes one dough portion to touch the other. The claims do not recite that the toppings are placed right where the two borders come together to prevent them from touching. Also, if the borders are distant from one another, then how can an edge be formed between the two borders.

With respect to the 103 rejection, applicant argues Persi and Viviano teach the edges of the paste are sealed intimately while the claimed top and bottoms borders are clearly distant to one another and sealed by the application the cordon. This argument is not persuasive because it is not known what applicant means by the borders being clearly distant to one another. The claims recite that " superposition of the top and bottom borders forming a peripheral edge between said borders". IF the top border is superposition on the bottom border and formed an edge between the borders, then they cannot be distant to one another. When the language of the claims is confusing, the

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claims are interpreted in light of the specification. The specification does not disclose that the borders are distant to one another; figure 1 does not show any distance. The borders have to touch each other to be sealed by the starch cordon. Applicant states a cordon is applied on the peripheral edge formed between the distant top and bottom borders. The rejection takes the position that it would have been obvious to apply a starch cordon disclosed by Viviano et al to further enhance the sealing. Applicant does not argue this position. It is unclear what applicant means by distance. If the distance refers to the cordon paste, then it is obvious the Persi product will have such distance when the cordon paste is applied. If distance refers to the top surface and bottom surfaces when the dough is folded, then it is obvious the Persi product also has such distance. Applicant argues in both the Persi and Viviano et al product, the borders are sealed together; but, the same sealing is claimed because claim 1 recites "coating the peripheral edge which are level with the borders with a cordon of paste, thus closing the pouch formed". Applicant states that "it is clear in that the borders 5 and 7 of the faces of the folded paste are separated and distant to each other but then goes on to state that the "peripheral edge, i.e. the distance between said borders, joined by the application of a cordon of edible paste". Applicant's own statements seem conflicting as to what distance means. If the distance refers to the distance between the top surface of the border 5 and bottom surface of the border 7, then the claims need to clarify this aspect because that is not what is being claimed. The distance between the top and bottom surfaces can vary depending on the thickness of the filling layer and it would have been obvious to one skilled in the art to vary the filling thickness depending on the

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taste wanted. If the distance refers to the peripheral edge that is being joined by the cordon of edible paste, then it is not understood what is meant by distance because the two surfaces come together and are sealed and applicant has not defined it in a numerical range. Thus, the limitation of "being distance to one another" does not define over the prior art.

Applicant's arguments filed 12/27/05 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

March 3, 2006

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1700